
STATUTORY INSTRUMENTS

1980 No. 563 (N.I. 5)

Domestic Proceedings (Northern Ireland) Order 1980

- - - - - [21st April 1980]

Modifications etc. (not altering text)

- C1** Order: functions of the Lord Chancellor are transferred to the Department of Justice (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(1)(6), [Sch. 17 para. 34](#) (with arts. 28-31); S.I. 2010/977, [art. 1\(2\)](#)

Introductory

Title and commencement

- 1.—(1) This Order may be cited as the Domestic Proceedings (Northern Ireland) Order 1980.
(2) *Commencement*

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

- (2) In this Order—

Definition rep. by 1995 NI 2

Definition rep. by 1987 NI 22

“child”, in relation to one or both of the parties to a marriage, includes^{F1} a child whose father and mother were not married to each other at the time of his birth within the meaning of Article 155 of the Children (Northern Ireland) Order 1995];

“child of the family”, in relation to the parties to a marriage, means—

- (a) a child of both of those parties; and
- (b) any other child, not being a child who is^{F1} placed with those parties as foster parents by an authority within the meaning of the Children (Northern Ireland) Order 1995] or a voluntary organisation, who has been treated by both of those parties as a child of their family;

^{F2} . . .

“the court”, in any provision except Article 40 and except where any other court is expressly referred to, means the court of summary jurisdiction which by virtue of this Order or of rules has jurisdiction for the purposes of that provision;

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“the Department” means the Department of Health and Social Services;

Definition rep. by 1998 NI 6

“legal custody”, in relation to a child, means so much of the parental rights and duties as relate to the person of the child (including the place and manner in which his time is spent, but excluding, except where the person having legal custody is a parent or guardian of the child, any right to effect or arrange for the child's emigration from the United Kingdom);

[^{F3F4}“maintenance assessment” means an assessment of maintenance made under the Child Support (Northern Ireland) Order 1991 and includes, except in circumstances prescribed for the purposes of the definition of that expression in Article 2(2) of that Order, an interim maintenance assessment within the meaning of that Order;]

“notice” means notice in writing;

“the parental rights and duties” means as respects a particular child (whether legitimate or not) all the rights and duties which by law the mother and father have in relation to a legitimate child and his property, and includes all elements included in such rights and duties, including a right of access;

Definition rep. by 1998 NI 6

“prescribed” means prescribed by rules;

Definition rep. by 1989 NI 4

“rules” means magistrates' courts rules;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 .

Para. (3) rep. by 1995 NI 2

(4) References in this Order to the parties to a marriage living with each other shall be construed as references to their living with each other in the same household, and references to their living apart shall be construed as references to their not living with each other in the same household.

(5) For the avoidance of doubt it is hereby declared that references in this Order to remarriage include references to a marriage which is by law void or voidable.

F1 1995 NI 2

F2 1998 NI 6

F3 SR 1993/98

F4 prosp. in pt. subst. by 2000 c. 4 (NI)

Powers of court to make orders for financial provision for parties to a marriage and children of the family

Grounds of application for financial provision

3. Either party to a marriage may apply to the court for an order under Article 4 on the ground that the other party to the marriage^{F5} . . .

- (a) has failed to provide reasonable maintenance for the applicant; or
- (b) has failed to provide, or to make a proper contribution towards, reasonable maintenance for any child of the family; or
- (c) has, since the date of the marriage, committed adultery; or
- (d) has behaved in such a way that the applicant cannot reasonably be expected to live with the respondent; or

(e) has deserted the applicant.

F5 1989 NI 4

Powers of court to make orders for financial provision

4.—(1) Where on an application for an order under this Article the applicant satisfies the court of any ground mentioned in Article 3, the court may, subject to the provisions of this Order, make any one or more of the following orders, that is to say—

- (a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order;
- (b) an order that the respondent shall pay to the applicant such lump sum as may be so specified;
- (c) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified;
- (d) an order that the respondent shall pay to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such lump sum as may be so specified.

(2) Without prejudice to the generality of paragraph (1)(b) or (d), an order under this Article for the payment of a lump sum may be made for the purpose of enabling any liability or expenses reasonably incurred in maintaining the applicant, or any child of the family to whom the application relates, before the making of the order to be met.

(3) ^{F6} The amount of any lump sum required to be paid by an order under this Article shall not exceed^{F7} £1,000] or such larger amount as the Secretary of State may^{F8} by order fix for the purposes of this paragraph.

^{F8}(4) ^{F6} ^{F9}Any order made by the Secretary of State under paragraph (3) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument, and section 5 of the Statutory Instruments Act 1946 , shall apply accordingly.

F6 functions transf. by 1993 NI 6
F7 SR 1989/323
F8 prosp. insertion by 2005 c. 4
F9 prosp. subst. by 2005 c. 4

[^{F10}Matters to which court is to have regard in exercising its powers under Article 4

5.—(1) Where an application is made for an order under Article 4, it shall be the duty of the court, in deciding whether to exercise its powers under that Article and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18.

(2) As regards the exercise of its powers under paragraph (1)(a) or (b) of Article 4, the court shall in particular have regard to the following matters—

- (a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;
- (b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

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- (c) the standard of living enjoyed by the parties to the marriage before the occurrence of the conduct which is alleged as the ground of the application;
 - (d) the age of each party to the marriage and the duration of the marriage;
 - (e) any physical or mental disability of either of the parties to the marriage;
 - (f) the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;
 - (g) the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it.
- (3) As regards the exercise of its powers under paragraph (1)(c) or (d) of Article 4, the court shall in particular have regard to the following matters—
- (a) the financial needs of the child;
 - (b) the income, earning capacity (if any), property and other financial resources of the child;
 - (c) any physical or mental disability of the child;
 - (d) the standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application;
 - (e) the manner in which the child was being and in which the parties to the marriage expected him to be educated or trained;
 - (f) the matters mentioned in relation to the parties to the marriage in sub-paragraphs (a) and (b) of paragraph (2).
- (4) As regards the exercise of its powers under Article 4 in favour of a child of the family who is not the child of the respondent, the court shall also have regard—
- (a) to whether the respondent has assumed any responsibility for the child's maintenance and, if he did, to the extent to which, and the basis on which, he assumed that responsibility and to the length of time during which he discharged that responsibility;
 - (b) to whether in assuming and discharging that responsibility the respondent did so knowing that the child was not his own child;
 - (c) to the liability of any other person to maintain the child.]

F10 1989 NI 4

Duration of orders for financial provision for a party to a marriage

6.—(1) The term to be specified in any order made under Article 4(1)(a) shall be such term as the court thinks fit except that the term shall not begin earlier than the date of the making of the application for the order and shall not extend beyond the death of either of the parties to the marriage.

(2) Where an order is made under Article 4(1)(a) and the marriage of the parties affected by the order is subsequently dissolved or annulled but the order continues in force, the order shall, notwithstanding anything in it, cease to have effect on the remarriage of^{F11}, or formation of a civil partnership by,] the party in whose favour it was made, except in relation to any arrears due under the order on the date of the remarriage^{F11} or formation of the civil partnership].

(3) A person whose remarriage causes an order made under Article 4(1)(a) to cease to have effect shall give notice of the remarriage to the court and any person who without reasonable excuse fails to give such notice shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

F11 2004 c. 33

Age limit on making orders for financial provision for children and duration of such orders

7.—(1) Subject to paragraph (3), no order shall be made under Article 4(1)(c) or (d) in favour of a child who has attained the age of 18.

(2) The term to be specified in an order made under Article 4(1)(c) in favour of a child may begin with the date of the making of an application for the order in question or any later date^{F12} or a date ascertained in accordance with paragraphs (7) or (9)] but—

- (a) shall not in the first instance extend beyond the date of the birthday of the child next following his attaining the upper limit of the compulsory school age (that is to say, the age that is for the time being that limit by virtue of Article 36 of the Education and Libraries (Northern Ireland) Order 1972)]^{F13} unless the court considers that in the circumstances of the case the welfare of the child requires that it should extend to a later date]; and
- (b) shall not in any event, subject to paragraph (3), extend beyond the date of the child's eighteenth birthday.

(3) The court—

- (a) may make an order under Article 4(1)(c) or (d) in favour of a child who has attained the age of 18, and
- (b) may include in an order made under Article 4(1)(c) in relation to a child who has not attained that age a provision for extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made to or for the benefit of that child,

if it appears to the court—

- (i) that the child is, or will be, or if such an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
- (ii) that there are special circumstances which justify the making of the order or provision.

(4) Any order made under Article 4(1)(c) in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

(5) An order made under Article 4(1)(c) in favour of a child to whom sub-paragraph (i) of paragraph (3) applies shall cease to have effect in the event of the child's ceasing to receive instruction or undergo training as mentioned in that sub-paragraph.

(6) Where an order made under Article 4(1)(c) ceases to have effect by virtue of an event mentioned in paragraph (5) the person to whom the periodical payments are directed by the order to be made shall give notice of the event to the court; and any person who without reasonable excuse fails to give such notice shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

^{F12}(7) Where—

- (a) a^{F14} maintenance assessment (“the ^{F14}current assessment”) is in force with respect to a child; and
- (b) before the end of the period of 6 months beginning with the date on which the^{F14} current assessment was made, an application is made for an order under Article 4(1)(c);

the term to be specified in any such order, or in any interim order under Article 20, made on that application, may be expressed to begin on, or any time thereafter, the earliest permitted date.

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- (8) For the purposes of paragraph (7), “the earliest permitted date”, is the later of—
- (a) the date six months before the application for the order was made; or
 - (b) the date on which the^{F14} current assessment took effect or, where successive^{F14} maintenance assessments have been continuously in force with respect to that child, the first of^{F14} those assessments took effect.
- (9) Where—
- (a) a^{F14} maintenance assessment ceases to have effect^{F15} or is cancelled by or under any provision of the Child Support (Northern Ireland) Order 1991; and
 - (b) before the end of the period of 6 months beginning with the relevant date, an application is made for an order under Article 4(1)(c) in relation to a child with respect to whom that^{F14} maintenance assessment was in force immediately before it ceased to have effect^{F15} or was cancelled,

the term to be specified in any such order, or in any interim order under Article 20, made on that application, may begin with the relevant date or any later date.

- (10) In paragraph (9) “the relevant date” means—
- (a) where the^{F14} maintenance assessment has ceased to have effect, the date on which it so ceased;
 - ^{F15}(b) where the^{F14} maintenance assessment was cancelled, the later of—
 - (i) the date on which the person who cancelled it did so, or
 - (ii) the date from which the cancellation first had effect.]

F12 SR 1993/98

F13 1989 NI 4

F14 prosp. in pt. subst. by 2000 c. 4 (NI)

F15 prosp. in pt. rep. by 2000 c. 4 (NI)

[^{F16}Orders for payments which have been agreed by the parties

8.—(1) Either party to a marriage may apply to the court for an order under this paragraph on the ground that either the party making the application or the other party to the marriage has agreed in writing to make such financial provision as may be specified in the application and, subject to paragraph (4), the court on such an application may, if—

- (a) it is satisfied that the applicant or the respondent, as the case may be, has agreed in writing to make that provision, and
- (b) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder,

order that the applicant or the respondent, as the case may be, shall make the financial provision specified in the application.

- (2) Where—
- (a) a party to a marriage has applied for an order under Article 4; and
 - (b) before the determination of that application, both parties to the marriage request the court to make an order that one party to the marriage shall make the financial provision specified in the request,

the court may, subject to paragraph (4), make such an order if—

- (i) it is satisfied that the applicant or the respondent, as the case may be, has agreed in writing to make the financial provision specified in the request; and
- (ii) it has no reason to think that it would be contrary to the interests of justice to exercise its powers hereunder;

and if an order is made under this paragraph, the application made for an order under Article 4 shall be treated as if it had been withdrawn.

(3) In this Article “financial provision” means the provision mentioned in any one or more of the following sub-paragraphs, that is to say—

- (a) the making of periodical payments by one party to the other,
- (b) the payment of a lump sum by one party to the other,
- (c) the making of periodical payments by one party to a child of the family or to the other party for the benefit of such a child,
- (d) the payment by one party of a lump sum to a child of the family or to the other party for the benefit of such a child,

and any reference in this Article to the financial provision specified in an application made under paragraph (1) or a request made under paragraph (2) or specified by the court under paragraph (6) is a reference to the type of provision specified in the application or request or by the court, as the case may be, to the amount so specified as the amount of any payment to be made thereunder and, in the case of periodical payments, to the term so specified as the term for which the payments are to be made.

(4) Where the financial provision specified in an application under paragraph (1) or a request under paragraph (2) includes or consists of provision in respect of a child of the family, the court shall not make an order under paragraph (1) or (2), as the case may be, unless it considers that the provision which the applicant or the respondent, as the case may be, has agreed to make in respect of that child provides for, or makes a proper contribution towards, the financial needs of the child.

(5) Where on an application under paragraph (1) or a request under paragraph (2) the court decides—

- (a) that it would be contrary to the interests of justice to make an order for the making of the financial provision specified in the application or request, or
- (b) that any financial provision which the applicant or the respondent, as the case may be, has agreed to make in respect of a child of the family does not provide for, or make a proper contribution towards, the financial needs of that child,

but is of the opinion—

- (i) that it would not be contrary to the interests of justice to make an order for the making of some other financial provision specified by the court, and
- (ii) that, in so far as that other financial provision contains any provision for a child of the family, it provides for, or makes a proper contribution towards, the financial needs of that child,

then, if both the parties agree, the court may order that the applicant or the respondent, as the case may be, shall make that other financial provision.

(6) Subject to paragraph (8), the provisions of Article 6, shall apply in relation to an order under this Article which requires periodical payments to be made to a party to a marriage for his own benefit as they apply in relation to an order under Article 4(1)(a).

(7) Subject to paragraph (8), the provisions of Article 7 shall apply in relation to an order under this Article for the making of financial provision in respect of a child of the family as they apply in relation to an order under Article 4(1)(c) or (d).

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(8) Where the court makes an order under paragraph (2) which contains provision for the making of periodical payments and, by virtue of that paragraph, an application for an order under Article 4 is treated as if it has been withdrawn, then the term which may be specified as the term for which the payments are to be made may begin with the date of the making of the application for the order under Article 4 or any later date.

(9) Where the respondent is not present or represented by counsel or solicitor at the hearing of an application for an order under paragraph (1), the court shall not make an order under that paragraph unless there is produced to the court such evidence as may be prescribed of—

- (a) the consent of the respondent to the making of the order,
- (b) the financial resources of the respondent, and
- (c) in a case where the financial provision specified in the application includes or consists of provision in respect of a child of the family to be made by the applicant to the respondent for the benefit of the child or to the child, the financial resources of the child.

(10) The making of an order under paragraph (1) or (2) shall not prevent the making of an order under Article 4 on a subsequent application under Article 3, and, without prejudice to the power of the court under Article 22(2) to revoke the first-mentioned order, on the making of an order under Article 4 the first-mentioned order shall cease to have effect.

(11) In any of the following provisions of this Order references to an application under this Article shall be construed as including references to a request under paragraph (2), and references to an applicant or respondent, in relation to any such request, shall be construed as references to the applicant or respondent in relation to the pending application under Article 4.]

F16 1989 NI 4

Powers of court where parties are living apart by agreement

9.—(1) Where the parties to a marriage have been living apart for a continuous period exceeding three months, neither party having deserted the other, and one of the parties has been making periodical payments for the benefit of the other party or of a child of the family, that other party may apply to the court for an order under this Article, and any application made under this paragraph shall specify the aggregate amount of the payments so made during the period of three months immediately preceding the date of the making of the application.

(2) Where on an application for an order under this Article the court is satisfied that the respondent has made the payments specified in the application, the court may, subject to the provisions of this Order, make one or both of the following orders, that is to say—

- (a) an order that the respondent shall make to the applicant such periodical payments, and for such term, as may be specified in the order;
- (b) an order that the respondent shall make to the applicant for the benefit of a child of the family to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified.

(3) The court in the exercise of its powers under this Article—

- (a) shall not require the respondent to make payments which exceed in aggregate during any period of three months the aggregate amount paid by him for the benefit of the applicant or a child of the family during the period of three months immediately preceding the date of the making of the application;
- (b) shall not require the respondent to make payments to or for the benefit of any person which exceed in amount the payments which the court considers that it would have required the respondent to make to or for the benefit of that person on an application under Article 3;

- (c) shall not require payments to be made to or for the benefit of a child of the family who is not a child of the respondent unless the court considers that it would have made an order in favour of that child on an application under Article 3.
- (4) Where on an application under this Article the court considers that the orders which it has the power to make under this Article—
- (a) would not provide reasonable maintenance for the applicant, or
 - (b) if the applicant relates to a child of the family, would not provide, or make a proper contribution towards, reasonable maintenance for that child,
- the court shall refuse to make an order under this Article, but the court may treat the application as if it were an application for an order under Article 4.
- (5) The provisions of Article 5 shall apply in relation to an application for an order under this Article as they apply in relation to an application for an order under Article 4 subject to the modification that for the reference in^{F17} Article 5(2)(c)] to the occurrence of the conduct which is alleged as the ground of the application there shall be substituted a reference to the living apart of the parties to the marriage.
- (6) The provisions of Article 6 shall apply in relation to an order under this Article which requires periodical payments to be made to the applicant for his own benefit as they apply in relation to an order under Article 4(1)(a).
- (7) The provisions of Article 7 shall apply in relation to an order under this Article for the making of periodical payments in respect of a child of the family as they apply in relation to an order under Article 4(1)(c).

F17 1989 NI 4

Powers of court as to the custody etc. of children

^{F18}Restrictions on making of orders: welfare of children

10. Where an application is made by a party to a marriage for an order under Article 4, 8 or 9, then, if there is a child of the family who is under the age of 18, the court shall not dismiss or make a final order on the application until it has decided whether to exercise any of its powers under the Children (Northern Ireland) Order 1995 with respect to the child.]

F18 1995 NI 2

Arts. 11#17 rep. by 1995 NI 2

Arts. 18, 19 rep. by 1998 NI 6

Interim orders

Interim maintenance orders and interim custody, etc., orders

- 20.—**(1) Where an application is made for an order under Article 4, 8 or 9—
- (a) the court at any time before making a final order on, or dismissing, the application or on refusing to make an order on the application by virtue of Article 29, and
 - (b) the High Court on ordering the application to be reheard by a court after the refusal of an order under Article 29, and
 - (c) the county court on an appeal from the order made by the court on the application at any time before making a final order on, or dismissing, the appeal,

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shall, subject to the provisions of this Order, have^{F19} . . .

- (i) power to make an order (an “interim maintenance order”) which requires the respondent to make to the applicant or to any child of the family who is under the age of 18, or to the applicant for the benefit of such a child, such periodical payments as the court thinks reasonable;

Head (ii) rep. by 1995 NI 2

Para. (2) rep. by 1995 NI 2

(3) An interim maintenance order may provide for payments to be made from such date as the court may specify,^{F20} except that, subject to Article 7(7) and 7(8) the date shall not be] earlier than the date of the making of the application for an order under Article 4, 8 or 9; and where such an order made by the county court on an appeal from the court provides for payments to be made from a date earlier than the date of the making of the order, the interim order may provide that payments made by the respondent under an order made by the court shall, to such extent and in such manner as may be provided by the interim order, be treated as having been paid on account of any payment provided for by the interim order.

[^{F21}(3A) Where an application is made for an order under Article 8 by the party to the marriage who has agreed to make the financial provision specified in the application—

- (a) paragraph (1) shall apply as if the reference in sub-paragraph (i) to the respondent were a reference to the applicant and the references to the applicant were references to the respondent; and

- (b) [^{F19}paragraph] (3) shall apply accordingly.]

Para. (4) rep. by 1995 NI 2

(5) Subject to paragraph (6), an interim order made under paragraph (1), if not previously revoked, shall cease to have effect on whichever of the following dates occurs first, that is to say—

- (a) the date, if any, specified for the purpose in the interim order;
- (b) the date of the expiration of the period of 14 weeks from the date of the making of the interim order;
- (c) the date on which the court either makes a final order on, or dismisses, the application for an order under Article 4, 8 or 9, or, where the interim order was made by a county court on an appeal, the date on which that court either makes a final order on, or dismisses, the appeal.

(6) Where an interim order made under paragraph (1) would, but for this paragraph, cease to have effect by virtue of paragraph (5)(a) or (b), the court which made the order or, in the case of an interim order made by the High Court, the court by which the application for an order under Article 4, 8 or 9 is to be reheard, shall have power by order to provide that the interim order shall continue in force for a further period, and any order continued in force under this paragraph, if not previously revoked, shall cease to have effect on whichever of the following dates occurs first, that is to say—

- (a) the date, if any, specified for the purpose in the order made under this paragraph;
- (b) the date of the expiration of the period of 14 weeks from the date of the making of the order under this paragraph or, if more than one order has been made under this paragraph with respect to the application, from the date of the making of the first of those orders;
- (c) the date on which the court either makes a final order on, or dismisses, the application for an order under Article 4, 8 or 9, or, where the interim order was made by a county court on an appeal, the date on which that court either makes a final order on, or dismisses, the appeal.

(7) Not more than one interim maintenance order^{F19}. . . may be made with respect to any application for an order under Article 4, 8 or 9, but without prejudice to the powers of a court under this Article on any further such application.

(8) An interim order made by the High Court under this Article on ordering that an application be reheard by the court shall, for the purpose of its enforcement and for the purposes of Article 22^{F19} . . . , be treated as if it were an order of the court and not of the High Court.

F19	1995 NI 2
F20	SR 1993/98
F21	1989 NI 4

Art. 21 rep. by 1998 NI 6

Variation, revocation and cessation of orders etc.

Variation, revival and revocation of orders for periodical payments

22.—(1) Where the court has made an order under Article 4(1)(*a*) or (*c*) for the making of periodical payments, the court shall have power, on an application made under this Article, to vary or revoke that order and also to make an order under Article 4(1)(*b*) or (*d*).

[^{F22}(2) Where the court has made an order under Article 8 for the making of periodical payments by a party to a marriage the court shall have power, on an application made under this Article, to vary or revoke that order and also to make an order for the payment of a lump sum by that party either—

- (a) to the other party to the marriage, or
- (b) to a child of the family or to that other party for the benefit of that child.]

(3) Where the court has made an order under Article 9 for the making of periodical payments, the court shall have power, on an application made under this Article, to vary or revoke that order.

Para. (4) rep. by 1995 NI 2

(5) Where the court has made an interim maintenance order under Article 20, the court, on an application made under this Article, shall have power to vary or revoke that order, except that the court shall not by virtue of this paragraph extend the period for which the order is in force.

(6) The power of the court under this Article to vary an order for the making of periodical payments shall include power to suspend any provision thereof temporarily and to revive any provision so suspended.

(7) Where the court has power by virtue of this Article to make an order for the payment of a lump sum, the amount of the lump sum shall not exceed the maximum amount that may at that time be required to be paid under Article 4(3), but the court may make an order for the payment of a lump sum not exceeding that amount notwithstanding that the person required to pay the lump sum was required to pay a lump sum by a previous order under this Order.

(8) Where the court has power by virtue of paragraph (2) to make an order for the payment of a lump sum and the respondent[^{F22} or the applicant, as the case may be,] has agreed to pay a lump sum of an amount exceeding the maximum amount that may at that time be required to be paid under Article 4(3), the court may, notwithstanding anything in paragraph (7), make an order for the payment of a lump sum of that amount.

(9) An order made by virtue of this Article which varies an order for the making of periodical payments may^{F23} . . . provide that the payments as so varied shall be made from such date as the court may specify,[^{F24} except that, subject to paragraphs (9A) and (9B), the date shall not be] earlier than the date of the making of the application under this Article.

[^{F24}(9A) Paragraph (9B) applies where—

- (a) a relevant order is in force requiring payments specified in it to be made to or for the benefit of more than one child without apportioning those payments between them;

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(b) a^{F25} maintenance assessment (“^{F25}the assessment”) is made with respect to one or more, but not all, of the children in whose favour the order is in force; and

(c) an application is made, before the end of the period of 6 months beginning with the date on which^{F25} the assessment was made, for the variation or revocation of the order.

(9B) Where this paragraph applies the court may, in exercise of its powers under this Article to vary or revoke the relevant order, direct that the variation or revocation shall take effect from the date on which^{F25} the assessment took effect or any later date.

(9C) In paragraphs (9A) and (9B) “relevant order” means—

- (a) an order under Article 4(1)(c),
- (b) an order under paragraph (1) of Article 8 making provision of a kind mentioned in sub# paragraph (c) of paragraph (2) of that Article (regardless of whether it makes provision of any other kind mentioned in paragraph (2) of that Article),
- (c) an order under Article 9(2)(b), or
- (d) an order which is an interim maintenance order under which the payments are to be made to a child or to the applicant for the benefit of a child.

(9D) Paragraph (9E) applies where—

- (a) a child order is affected by a^{F25} maintenance assessment and, on the date on which the child order became so affected, there was in force a spousal order; and
- (b) an application is made, before the end of the period of 6 months beginning with the date on which the^{F25} maintenance assessment was made, for the spousal order to be varied or revoked.

(9E) Where this paragraph applies the court may, in exercise of its powers under this Article to vary or revoke the spousal order, direct that the variation or revocation shall take effect from the date on which the child order became so affected or any later date.

(9F) In paragraphs (9D) and (9E)—

“child order” means an order of a kind prescribed for the purposes of Article 12(1) of the Child Support (Northern Ireland) Order 1991; and

“spousal order” means—

- (i) an order under Article 4(1)(a),
- (ii) an order under paragraph (1) of Article 8 making provision of a kind mentioned in sub# paragraph (a) of paragraph (8) of that Article (regardless of whether it makes provision of any other kind mentioned in paragraph (2) of that Article),
- (iii) an order under Article 9(2)(a), or
- (iv) an order which is an interim maintenance order under which the payments are to be made to the applicant (otherwise than for the benefit of a child).

(9G) For the purposes of paragraphs (9D) and (9E), an order is affected if it ceased to have effect or is modified by or under Article 12 of the Child Support (Northern Ireland) Order 1991.]

Para. (10) rep. by 1995 NI 2

(11) In exercising the powers conferred by this Article the court shall, so far as it appears to the court just to do so, give effect to any agreement which has been reached between the parties in relation to the application and, if there is no such agreement or if the court decides not to give effect to the agreement, the court shall have regard to all the circumstances of the case, [^{F22} first consideration being given to the welfare while a minor of any child of the family who has not attained the age of 18, and the circumstances of the case shall include any change] in any of the matters to which the court was required to have regard when making the order to which the application relates or, in the case

of an application for the variation or revocation of an order made under Article 8 or on an appeal, to which the court would have been required to have regard if that order had been made under Article 4.

[^{F23}(12) An application under this Article may be made—

- (a) where it is for the variation or revocation of an order under Article 4, 8, 9 or 20 for periodical payments, by either party to the marriage in question; and
- (b) where it is for the variation of an order made under Article 4(1)(c), 8 or 9 for periodical payments to or in respect of a child, also by the child himself, if he has attained the age of 16.]

Para. (13) rep. by 1995 NI 2

F22 1989 NI 4

F23 1995 NI 2

F24 SR 1993/98

F25 prosp. in pt. subst. by 2000 c. 4 (NI)

[^{F26}**Variation of orders for periodical payments: further provisions**

22A.—(1) Subject to paragraphs (7) and (8), the power of the court under Article 22 to vary an order for the making of periodical payments shall include power, if the court is satisfied that payment has not been made in accordance with the order, to exercise one of its powers under sub-paragraphs (a) to (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981 (orders for periodical payment: method of payment).

(2) In any case where—

- (a) a court of summary jurisdiction has made an order under this Order for the making of periodical payments, and
- (b) payments under the order are required to be made by any method of payment falling within Article 85(7) of the Magistrates' Courts (Northern Ireland) Order 1981 (standing order, etc.),

an application may be made under this paragraph to the clerk of petty sessions for the order to be varied as mentioned in paragraph (3).

(3) Subject to paragraph (5), where an application is made under paragraph (2), the clerk, after serving written notice of the application on the respondent and allowing the respondent, within the period of 14 days from the date of the serving of that notice, an opportunity to make written representations, may vary the order to provide that payments under the order shall be made to the collecting officer.

(4) The clerk may proceed with an application under paragraph (2) notwithstanding that the respondent has not received written notice of the application.

(5) Where an application has been made under paragraph (2), the clerk may, if he considers it inappropriate to exercise his power under paragraph (3), refer the matter to the court which, subject to paragraphs (7) and (8), may vary the order by exercising one of its powers under sub-paragraphs (a) to (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981.

(6) Paragraph (5) of Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981 (power of court to order that account be opened) shall apply for the purposes of paragraphs (1) and (5) as it applies for the purposes of that Article.

(7) Before varying the order by exercising one of its powers under sub-paragraphs (a) to (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981, the court shall have regard to any representations made by the parties to the application.

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(8) If the court does not propose to exercise its power under sub-paragraph (c) or (d) of Article 85(3) of the Magistrates' Courts (Northern Ireland) Order 1981, the court shall, unless upon representations expressly made in that behalf by the person to whom payments under the order are required to be made it is satisfied that it is undesirable to do so, exercise its power under sub-paragraph (b) of that paragraph.

(9) Paragraph (12) of Article 22 shall have effect for the purposes of applications under paragraph (2) as it has effect for the purposes of applications under that Article.

(10) None of the powers of the court, or of the clerk of petty sessions, conferred by this Article shall be exercisable in relation to an order under this Order for the making of periodical payments which is not a qualifying maintenance order (within the meaning of Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981).]

F26 1993 NI 6

[^{F27}Revival of orders for periodical payments

22B.—(1) Where an order made by the court under this Order for the making of periodical payments to or in respect of a child (other than an interim maintenance order) ceases to have effect—

- (a) on the date on which the child attains the age of 16, or
- (b) at any time after that date but before or on the date on which he attains the age of 18,

the child may apply to the court for an order for its revival.

(2) If on such an application it appears to the court that—

- (a) the child is, will be or (if an order were made under this paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment, or
- (b) there are special circumstances which justify the making of an order under this paragraph,

the court shall have power by order to revive the order from such date as the court may specify, not being earlier than the date of the making of the application.

(3) Any order revived under this Article may be varied or revoked under Article 22 in the same way as it could have been varied or revoked had it continued in being.]

F27 1995 NI 2

Art. 23 rep. by 1995 NI 2

Variation of instalments, or remission of lump sum

24.—(1) Where in the exercise of its powers under [^{F28} Article 97 of the Magistrates' Courts (Northern Ireland) Order 1981] the court orders that a lump sum required to be paid under this Order shall be paid by instalments, the court, on an application made by either the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying the number of instalments payable, the amount of any instalment payable and the date on which any instalment becomes payable.

(2) On the hearing of a complaint for the enforcement, revocation, suspension or variation of an order under this Order which provides for the payment of a lump sum the court may remit the whole or any part of that sum.

F28 1981 NI 26

Supplementary provisions with respect to variation and revocation of orders

25.—^{F29}(1) Provision may be made by rules as to the persons who are to be made respondents on an application for the variation or revocation of an order under Article^{F30} 22]; and if on an application under^{F30} that Article] there are two or more respondents, the powers of the court under^{F31} Article 163 of the Magistrates' Courts (Northern Ireland) Order 1981] shall be deemed to include power, whatever adjudication the court makes on the application, to order any of the parties to pay the whole or part of the costs of all or any of the other parties.

(2) The powers of a court of summary jurisdiction under^{F31} Article 86 of the said Order of 1981] to revoke, suspend, revive, vary or discharge an order for the periodical payment of money^{F32} and the power of the clerk of petty sessions to vary such an order] shall not apply in relation to an order made under this Order.

F29 prosp. rep. by 1995 NI 2
F30 1995 NI 2
F31 1981 NI 26
F32 1993 NI 6

Proceedings by or against a person outside Northern Ireland for variation or revocation of orders

^{F33}**26.**—(1) It is hereby declared that any jurisdiction conferred on a court of summary jurisdiction by virtue of Article 22 or 23 is exercisable notwithstanding that the proceedings are brought by or against a person residing outside Northern Ireland.

(2) Subject to paragraph (3), a court of summary jurisdiction may, if it is satisfied that the respondent has been outside the United Kingdom during such period as may be prescribed, proceed on an application made under Article 22 or 23 notwithstanding that the respondent has not been served with the summons; and rules may prescribe any other matters as to which the court is to be satisfied before proceeding in such a case.

(3) A court of summary jurisdiction shall not exercise its powers under Article 22 so as to increase the amount of any periodical payments required to be made by any person under this Order unless the order under that Article is made at a hearing at which that person appears or the requirements of^{F34} Article 81(2) of the Magistrates' Courts (Northern Ireland) Order 1981] with respect to proof of service of summons or appearance on a previous occasion are satisfied in respect of that person.

F33 prosp. rep. by 1995 NI 2
F34 1981 NI 26

Effect on certain orders of parties living together

27.—(1) Where—

- (a) periodical payments are required to be made to one of the parties to a marriage (whether for his own benefit or for the benefit of a child of the family) by an order made under Article 4^{F35} or 8] or by an interim maintenance order made under Article 20 (otherwise than on an application under Article 9),^{F35} . . .

Sub#para. (b) rep. by 1995 NI 2

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the order shall be enforceable notwithstanding that the parties to the marriage are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently resume living with each other; but the order shall cease to have effect if after that date the parties continue to live with each other, or resume living with each other, for a continuous period exceeding six months.

(2) Where any of the following orders is made, that is to say—

(a) an order under Article 4^{F35} or 8] which requires periodical payments to be made to a child of the family,^{F35} or]

(b) an interim maintenance order under Article 20 (otherwise than on an application under Article 9) which requires periodical payments to be made to a child of the family,

Sub#paras. (c), (d) rep. by 1995 NI 2

then, unless the court otherwise directs, the order shall continue to have effect and be enforceable notwithstanding that the parties to the marriage in question are living with each other at the date of the making of the order or that, although they are not living with each other at that date, they subsequently resume living with each other.

(3) Any order made under Article 9, and any interim maintenance order made on an application for an order under that Article, shall cease to have effect if the parties to the marriage resume living with each other.

(4) Where an order ceases to have effect by virtue of paragraph (1) or (3) or by virtue of a direction given under paragraph (2), the court may, on an application made by either party to the marriage, make an order declaring that the first-mentioned order ceased to have effect from such date as the court may specify.

(5) When an order ceases to have effect by virtue of paragraph (1) or (3), the parties to the marriage shall forthwith give notice to the court of that fact.

F35 1995 NI 2

Reconciliation

Reconciliation

28.—(1) If before the hearing of any evidence in proceedings on an application for an order under Article 4 a statement is made to the court by or on behalf of the parties to the marriage showing a possibility of reconciliation between them, the court shall adjourn the proceedings for such period as it thinks fit.

(2) If at any stage of the proceedings on an application for an order under Article 4 it appears to the court that there is a reasonable possibility of reconciliation between the parties to the marriage, the court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect a reconciliation.

(3) Where the court adjourns any proceedings under paragraph (1) or (2), it may request that a suitably qualified person acting under arrangements made by the Department or any other person, willing and able to do so and acceptable to both parties, whom the court may appoint should attempt to effect a reconciliation between the parties to the marriage, and where any such request is made, the person so acting shall report in writing to the court whether the attempt has been successful or not, but shall not include in that report any other information.

(4) The powers conferred by this Article are additional to any other power of the court to adjourn proceedings.

Provisions relating to High Court and county court

Refusal of order in case more suitable for High Court

29. Where on hearing an application for an order under Article 4 a court of summary jurisdiction is of the opinion that any of the matters in question between the parties would be more suitably dealt with by the High Court, the court of summary jurisdiction shall refuse to make any order on the application, and no appeal shall lie from that refusal; but if in any proceedings in the High Court relating to or comprising the same subject matter as that application the High Court so orders, the application shall be reheard and determined by a court of summary jurisdiction acting for the same petty sessions district as the first-mentioned court.

Powers of High Court and divorce county court in relation to certain orders under this Order

30.—(1) Where after the making by a court of summary jurisdiction of an order under this Order proceedings between, and relating to the marriage of, the parties to the proceedings in which that order was made have been commenced in the High Court or a divorce county court, then, except in the case of an order for the payment of a lump sum, the court in which the proceedings or any application made therein are or is pending may, if it thinks fit, direct that the order made by a court of summary jurisdiction shall cease to have effect on such date as may be specified in the direction.
Para. (1A) rep. by 1998 NI 6

(2) Nothing in this Article shall be taken as prejudicing the effect of any order made by the High Court or^{F36} a county court (whether or not it is a divorce county court)] so far as it implicitly supersedes or revokes an order or part of an order made by a court of summary jurisdiction.

(3) In this Article “divorce county court” has the same meaning as in the Matrimonial Causes (Northern Ireland) Order 1978 .

F36 1984 NI 14

Appeals

31.—(1) No appeal shall lie to the county court from the making or refusal to make, the variation of or refusal to vary, or the revocation of or refusal to revoke an interim maintenance order^{F37}. . . under Article 20^{F38}. . . .

(2) Notwithstanding^{F39} Article 117 of the Magistrates' Courts (Northern Ireland) Order 1981], where an appeal is made to a county court against an order of a court of summary jurisdiction under this Order for the periodical payment of money,^{F38}. . . , or where an application is made for a case to be stated for the opinion of the Court of Appeal upon a point of law arising in connection with any such order, the order may be enforced pending the determination of the appeal or, as the case may be, the decision on the point of law.

(3) Without prejudice to the generality of section 22 of the Interpretation Act (Northern Ireland) 1954 (powers of appellate courts), on an appeal to the county court from an order made by a court of summary jurisdiction under this Order the county court shall have power to make such orders as may be necessary to give effect to its determination of the appeal, including such incidental or consequential orders as appear to the court to be just, and, in the case of an appeal from an order made by a court of summary jurisdiction on an application for or in respect of an order for the making of periodical payments, the county court shall have power to order that its determination of the appeal shall have effect from such date as the court thinks fit, not being earlier than the date of the making of the application to the court of summary jurisdiction^{F40} or, in a case where there was made to the

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court of summary jurisdiction an application for an order under Article 4 and a request under Article 8(2) and the term of the periodical payments was or might have been ordered to begin on the date of the making of the application for an order under Article 4, the date of the making of that application].

(4) Without prejudice to the generality of the said section 22 and paragraph (3), where, on an appeal to the county court in respect of an order made by a court of summary jurisdiction requiring any person to make periodical payments, the county court reduces the amount of those payments or discharges the order, the county court shall have power to order the person entitled to payments under the order of the court of summary jurisdiction to pay to the person liable to make payments under that order such sum in respect of payments already made in compliance with the order, in such manner, as the court thinks fit and, if any arrears are due under the order of the court of summary jurisdiction the county court shall have power to remit the payment of those arrears or any part thereof.

(5) Any order of the county court made on an appeal from an order made by a court of summary jurisdiction under this Order shall for the purposes of^{F37} Article 22] be treated as if it were an order of the court of summary jurisdiction from which the appeal was brought and not of the county court.

F37 1995 NI 2
F38 1998 NI 6
F39 1981 NI 26
F40 1989 NI 4

Provisions relating to jurisdiction, procedure and enforcement

Jurisdiction

32.—(1) [^{F41}Subject to section 19 of the Family Law Act 1986 and without prejudice] to^{F42} Article 77(3) of the Magistrates' Courts (Northern Ireland) Order 1981], a court of summary jurisdiction shall have jurisdiction to hear an application for an order under this Order if at the date of the making of the application either the applicant or the respondent resides within the county court division which includes the petty sessions district for which the court sits.

Paras. (2), (3) rep. by 1995 NI 2

(4) It is hereby declared that any jurisdiction conferred on a court of summary jurisdiction by this Order is exercisable notwithstanding that any party to the proceedings is not domiciled in Northern Ireland.

(5) Nothing in this Article empowers a court to make an exclusion order specifying premises that are situated outside Northern Ireland.

F41 1986 c. 55
F42 1981 NI 26

Procedure

33.—^{F43}(1) Any application for an order under this Order, including an application for the variation, revocation or revival of such an order, shall be made by way of complaint under^{F44} Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981].

Para. (2) rep. by 1995 NI 2

(3) Where—

- (a) under sub-paragraph (ii) of paragraph (3) of Article 7 it appears to the court that there are special circumstances justifying the making of an order or provision such as is mentioned in that paragraph; or

(b) under Article 11(1) or 12(1) it appears to the court that there are exceptional circumstances making it desirable for a child to be under the supervision of an independent person or, as the case may be, making it impracticable or undesirable for a child to be entrusted to either of the parties to the marriage or any other person who is a parent of the child;^{F45} . . .
Sub#para. (c) rep. by 1998 NI 6
the court shall by order specify those circumstances.

(4) Where under any provision of this Order an order made by any court ceases to have effect on the date on which a court makes a final order on, or dismisses, an application or an appeal, it shall cease to have effect immediately on the completion of the court sitting at which the final order or dismiss is made; and where it ceases to have effect on any other date, it shall cease to have effect immediately on the expiration of the day of that date.

F43 prosp. subst. by 1995 NI 2

F44 1981 NI 26

F45 1998 NI 6

Constitution of courts

34.—(1) Subject to paragraph (2), anything authorised or required by this Order to be done by, to or before a court of summary jurisdiction by, to or before which any other thing was done, or is to be done (including the hearing or disposal of an adjourned application), may be done by, to or before any court of summary jurisdiction acting for the same petty sessions district as that court.

(2) Where in an order adjourning the hearing of an application under Article 3 the court has declared that it is satisfied of any ground mentioned in that Article, then if the court which resumes the hearing of that application does not comprise the same resident magistrate as sat when the hearing began, the court which resumes the hearing shall before making any order on the application make such inquiry into the facts and circumstances of the case as will enable it to be fully acquainted with those facts and circumstances.

Time limit for applications

35.—(1) Without prejudice to paragraph (2), a court of summary jurisdiction shall have jurisdiction to hear and determine an application for an order under Article 4 where the application was made within a period of one year from the time when the relevant ground mentioned in Article 3 occurred or, where the ground is a continuing one, from the time when the ground ceased to continue.

(2) Where the ground alleged in the application is the commission of an act of adultery by the respondent, the application may be heard if it is made within one year from the date when that act of adultery first became known to the applicant.

(3) The court shall have jurisdiction to hear and determine at any time an application for the variation, suspension, revival or revocation of any order made under this Order.

VALID FROM 18/04/2011

^{F46}Extension of time limit: mediation

35A.—(1) Paragraph (2) applies where—

- (a) there is mediation in relation to a relevant cross border dispute giving rise to an application for an order under Article 4; and

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(b) the period of 1 year referred to in Article 35 (“the limitation period”) would, apart from this Article, expire—

- (i) in the period of 8 weeks after the date on which the mediation ends;
- (ii) on the date on which the mediation ends; or
- (iii) after the date on which all of the parties to the dispute agree to participate in the mediation but before the date on which the mediation ends.

(2) Where this paragraph applies, the limitation period is extended so that it expires on the date falling 8 weeks after the date on which the mediation ends.

(3) For the purposes of paragraph (1) and (2), a mediation in relation to a relevant cross-border dispute ends on the date of the first of these to occur—

- (a) all of the parties reach an agreement in resolution of the dispute;
- (b) all of the parties agree to end the mediation;
- (c) a party notifies all of the other parties of that party's withdrawal,
- (d) a period of 14 days expires after a request made by one party to another party for confirmation of whether the other party has withdrawn and the other party does not respond in that period, or
- (e) a period of 14 days expires after the date on which the mediator's tenure ends (by reason of death, resignation or otherwise) and a replacement mediator has not been appointed in that period.

(4) In this Article—

“the Directive” means Directive 2008/52/EC of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters;

“mediation” and “mediator” have the meanings given by Article 3 of the Directive; and

“relevant cross-border dispute” means a cross-border dispute within the meaning given by Article 2 of the Directive.]

F46 Art. 35A inserted (18.4.2011) by Cross-Border Mediation Regulations (Northern Ireland) 2011 (S.R. 2011/157), reg. 8(3) (with reg. 1(2))

Enforcement etc. of orders for payment of money

36.—(1) Without prejudice to^{F47} Article 85 of the Magistrates' Courts (Northern Ireland) Order 1981] (power of a court of summary jurisdiction to direct periodical payments to be made through the collecting officer) a court of summary jurisdiction making an order under this Order for the making of a periodical payment by one person to another may direct that it shall be made to some third party on that other person's behalf instead of directly to that other person; and, for the purposes of any order made under this Order,^{F48} the said Article 85 shall have effect as if, in paragraph (8)] for the words^{F48} “the person who applied for the order”] there were substituted the words “ the person to whom the payments under the order fall to be made ”.

Para. (2) rep. by 1981 NI 6

(3) [^{F48}Subject to Article 85(14) of the Order of 1981,] any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made under this Order shall give notice of any change of address to such person, if any, as may be specified in the order; and any person who without reasonable excuse fails to give such a notice shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £50.

(4) A person shall not be entitled to enforce through the High Court the payment of any arrears due under an order made by virtue of this Order without the leave of the High Court if those arrears became due more than 12 months before proceedings to enforce the payment of them are begun.

(5) The High Court on hearing an application for the grant of leave under paragraph (4) may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as the High Court thinks proper, or may remit the payment of such arrears or any part thereof.

(6) An application for the grant of leave under paragraph (4) shall be made in such manner as may be prescribed by rules of court.

F47 1981 NI 26

F48 1993 NI 6

Arts. 37, 38 rep. by 1995 NI 2

Provisions as to payments required to be made to a child etc.

39.—(1) Where periodical payments are required to be made, or a lump sum is required to be paid, to a child under an order made under this Order, any sum required under the order to be paid to the child may be paid to the person with whom the child has his home, and that person—

- (a) may proceed in his own name for the variation, revocation or revival of the order; and
- (b) may proceed in his own name for the recovery of any sum required to be paid under the order^{F49} or request or authorise the collecting officer under paragraph (1) or paragraph (2) respectively of Article 85A of the 1981 order].

(2) Where a child has a right under Article^{F50} 22B] to apply for the revival of an order which provided for the making of periodical payments to or for the benefit of the child, the person with whom the child has his home may proceed in his own name for the revival of that order.

(3) Where any person by whom periodical payments are required to be paid to a child under an order made under this Order makes an application for the variation or revocation of that order, the person with whom the child has his home may, instead of or as well as the child, appear as respondent.

(4) Nothing in paragraphs (1) and (2) shall affect any right of a child to proceed in his own name for the variation or revival of an order or for the recovery of any sum payable thereunder.

(5) ^{F50} . . . where a child is^{F50} looked after by an authority (within the meaning of the Children (Northern Ireland) Order 1995), that authority] shall be treated for the purposes of this Article as the person with whom the child has his home.

(6) In this Article—

“child” means a person who has not attained the age of 18;

“collecting officer” means the officer mentioned in^{F51}[^{F49} Article 85(4)] of the Magistrates' Courts (Northern Ireland) Order 1981].

F49 1993 NI 6

F50 1995 NI 2

F51 1981 NI 26

Orders for repayment in certain cases of sums paid after cessation of order by reason of remarriage^{F52} or formation of civil partnership]

40.—(1) Where—

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- (a) an order made under Article 4(1)(a), 8 or 9 has, by virtue of Article 6(2), 8(6) or 9(6), ceased to have effect by reason of the remarriage of^{F52}, or formation of a civil partnership by,] the party in whose favour it was made, and
- (b) the person liable to make payments under the order made payments in accordance with it in respect of a period after the date of that remarriage^{F52} or the formation of that civil partnership] in the mistaken belief that the order was still subsisting,

no proceedings in respect of a cause of action arising out of the circumstances mentioned in subparagraphs (a) and (b) shall be maintainable by the person so liable or his personal representatives against the person entitled to payments under the order or his personal representatives, but on an application made under this Article the court may exercise the powers conferred on it by paragraph (2).

(2) The court may order the respondent to an application made under this Article to pay to the applicant a sum equal to the amount of the payments made in respect of the period mentioned in paragraph (1)(b) or, if it appears to the court that it would be unjust to make that order, it may either order the respondent to pay to the applicant such lesser sum as it thinks fit or dismiss the application.

(3) An application under this Article may be made by the person liable to make payments under the order made under Article 4(1)(a), 8 or 9 or his personal representatives and may be made against the person entitled to payments under that order or his personal representatives.

(4) An application under this Article shall be made to a county court, except that such an application may be made in proceedings in the High Court for leave to enforce, or in proceedings in the High Court or a court of summary jurisdiction for the enforcement of, the payment of arrears under an order made under Article 4(1)(a), 8 or 9; and accordingly references in this Article to the court are references to the High Court or a county court or a court of summary jurisdiction, as the circumstances require.

(5) An order under this Article for the payment of any sum may provide for the payment of that sum by instalments of such amount as may be specified in the order.

(6) The jurisdiction conferred on a county court by this Article shall be exercisable by a county court notwithstanding that by reason of the amount claimed in an application under this Article the jurisdiction would not but for this paragraph be exercisable by a county court.

(7) A person dissatisfied with an order made by a county court in the exercise of the jurisdiction conferred by this Article or with the dismissal of any application instituted by him under the provisions of this Article shall be entitled to appeal from the order or from the dismissal as if the order or dismissal had been made in exercise of the jurisdiction conferred by Part III of the County Courts (Northern Ireland) Order 1980 and the appeal brought under Part VI of that Order, and Articles 61 (cases stated by county court judge) and 62 (cases stated by High Court on appeal from county court) of that Order shall apply accordingly.

(8) The collecting officer of a court of summary jurisdiction to whom any payments under an order made under Article 4(1)(a), 8 or 9, or under an attachment of earnings order made to secure payments under the first-mentioned order, are required to be made shall not be liable—

- (a) for any act done by him in pursuance of the first-mentioned order after the date on which that order or a provision thereof ceased to have effect by reason of the remarriage of^{F52}, or formation of a civil partnership by,] the person entitled to payments under it, and
- (b) for any act done by him after that date in accordance with any statutory provision specifying how payments made to him in compliance with the attachment of earnings order are to be dealt with,

if, but only if, the act was one which he would have been under a duty to do had the first-mentioned order not ceased to have effect by reason of the remarriage^{F52} or the formation of that civil partnership] and the act was done before notice of the fact that the person so entitled had

remarried^{F52} or formed a civil partnership] was given to him by or on behalf of that person, the person liable to make payments under the first-mentioned order or the personal representatives of either of those persons.

(9) In this Article “collecting officer” means the officer mentioned in^{F53} Article 85(2) or (3) of the Magistrates' Courts (Northern Ireland) Order 1981].

F52 2004 c. 33

F53 1981 NI 26

Art. 41 rep. by 1981 NI 26

General

Saving and transitional provisions, amendments and repeals

42.—(1) The saving and transitional provisions contained in Schedule 2 shall have effect.
Para.2(a), with Schedule 3, effects amendments; sub-para.(b), with Schedule 4, effects repeals

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SCHEDULES

Schedule 1 rep. by 1998 NI 6

SCHEDULE 2

Article 42(1).

SAVING AND TRANSITIONAL PROVISIONS

Para. 1 rep. by 1995 NI 2

2. Any order made or other thing done under the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945 which is in force immediately before the coming into operation of the repeal of that Act made by this Order shall not be affected by that repeal, and the provisions of that Act shall, notwithstanding that repeal, continue to apply in relation to such an order, and to an order made under that Act by virtue of paragraph 1, subject to the following modifications—

(a) on an application for the discharge of the order the court shall not be bound under the proviso to section 5(1) of that Act to discharge the order by reason of an act of adultery committed by the person on whose application the order was made;

(b) on an application for the variation, revival or discharge of the order, the court, in exercising its powers under the said section 5 in relation to a provision of the order requiring the payment of money, shall have regard to any change in any of the matters to which the court would have been required to have regard when making that order if the order had been made on an application for an order under Article 4 of this Order;

[^{F54}(bb) on an application after the coming into operation of paragraph 25 of Schedule 1 to the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 for the variation, revival or discharge of the order, the court, in exercising its powers under the said section 5 in relation to any provision of the order requiring the payment of money, shall have power to order that payments required to be made for the maintenance of a child of the family shall be made to the child himself;]

Sub#paras. (c), (d) rep. by 1995 NI 2

F54 1989 NI 4

3. Without prejudice to paragraph 2, the amendment or repeal by this Order of any statutory provision shall not affect the operation of that provision in relation to any order made or having effect as if made under the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945 (including an order made under that Act by virtue of paragraph 1) or in relation to any decision of a court of summary jurisdiction made on an application for such an order or for the variation, suspension, revival or discharge of such an order.

Para. 4 rep. by 1995 NI 2

Status: Point in time view as at 01/01/2006. This version of this Order contains provisions that are not valid for this point in time.

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Para. 5 rep. by 1981 NI 26

Para. 6 rep. by 1995 NI 2

Schedule 3—Amendments

Schedule 4—Repeals

Status:

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Changes to legislation:

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